

Article - Public Utilities

[\[Previous\]](#)[\[Next\]](#)

§29–103.

(a) In this section, “Commission Pretreatment Program” means any program adopted under the authority of § 9–332 of the Environment Article and § 17–403 of this article to:

- (1) meet national and local pretreatment requirements; and
- (2) eliminate the contribution of each pollutant discharged from an industrial user into a publicly owned treatment works that:
 - (i) causes pass through or interference with the publicly owned treatment works; or
 - (ii) contaminates sewage sludge.

(b) (1) The Commission may issue a written complaint if the Commission has reasonable grounds to believe that a person has violated a provision of the Commission Pretreatment Program.

- (2) A complaint issued under this subsection shall:
 - (i) specify the provision of the Commission Pretreatment Program that allegedly has been violated; and
 - (ii) state the alleged facts that constitute the violation.

(c) (1) After or concurrently with service of a complaint under this section, the Commission may issue an administrative order that requires the person to whom the order is directed to:

- (i) take corrective action within a time set in the order;
- (ii) file with the Commission a written report about the alleged violation;
- (iii) appear at a hearing before the Commission at a time and place the Commission sets to answer the charges in the order; or

(iv) file a written report and appear at a hearing before the Commission at a time and place the Commission sets to answer the charges in the order.

(2) Any order issued under this subsection is effective immediately when it is served.

(d) (1) A complaint or order issued by the Commission under this section shall be served on the person to whom the complaint or order is directed:

(i) personally; or

(ii) by certified mail, return receipt requested to the person's last known address as shown on the Commission's records.

(2) If service is made by certified mail, the person who mails the document shall file with the Commission verified proof of mailing.

(3) If the Commission is unable with due diligence to serve process under paragraph (1) of this subsection, a complaint or order shall be served by publication reasonably tailored to provide actual notice to the person to whom the complaint or order is directed.

(4) An order issued under this section that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(i) the time set for the hearing, if any; or

(ii) the time set for the filing of the report, if any.

(e) (1) Within 10 days after being served with an order under subsection (c)(1)(i) or (ii) of this section, the person served may request in writing a hearing before the Commission.

(2) The Commission shall give notice and hold a hearing under this section in accordance with the Administrative Procedure Act.

(3) In connection with a hearing conducted under this section, the Commission, on its own initiative or at the request of the person to whom the complaint or order is directed, may:

(i) subpoena any person or evidence that is essential for proper consideration at the hearing; and

(ii) order a witness to give evidence.

(4) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Commission or the person to whom the complaint or order is directed, a circuit court may compel:

(i) obedience to the order or subpoena; or

(ii) testimony or the production of evidence.

(f) The Commission may designate a hearing officer to conduct a hearing required under this section and issue the final order and decision of the Commission.

(g) (1) Unless the person served with a corrective action order under subsection (c)(1)(i) of this section makes a request for a hearing in accordance with subsection (e)(1) of this section, the order is a final order.

(2) If the person served with a corrective action order under subsection (c)(1)(i) of this section makes a request for a hearing in accordance with subsection (e)(1) of this section, the order becomes a final corrective order in accordance with the decision of the Commission following the hearing.

(3) If the Commission issues an order under subsection (c)(1)(ii), (iii), or (iv) of this section, the Commission may not issue an order that requires corrective action until after the later of:

(i) the conclusion of the hearing, if any; or

(ii) the review of the report, if any.

(4) After the time provided in paragraph (3) of this subsection, if the Commission finds that a violation of the Commission Pretreatment Program has occurred, the Commission shall issue an order that requires correction of the violation within the time set in the order.

(5) An order issued under paragraph (4) of this subsection is a final corrective order and the person to whom the order is directed is not entitled to a hearing before the Commission as a result of the order.

(6) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, the Commission shall take action to secure compliance with a final corrective order, including filing suit to require correction of the violation.

(h) In an action for an injunction under § 29–104 of this title to enforce the compliance with or restrain the violation of a provision of the Commission Pretreatment Program or an administrative order issued under this section:

(1) a finding of the Commission after a hearing is prima facie evidence of each fact the Commission determines; and

(2) on a showing that a person is violating or is about to violate a provision of the Commission Pretreatment Program or an administrative order issued under this subsection, the court shall grant the injunction without requiring a showing of a lack of an adequate remedy at law.

(i) (1) In addition to any other judicial remedy and after an opportunity for a hearing, the Commission may impose a penalty for a violation of a provision of the Commission Pretreatment Program stated in the complaint or an administrative order issued under this section.

(2) The Commission shall provide the person subject to a penalty under paragraph (1) of this subsection a written notice stating that:

(i) the Commission intends to assess a penalty against the person;

(ii) the person may request in writing a hearing before the Commission no later than 10 days after receipt of the notice; and

(iii) the failure to file a written request for a hearing no later than 10 days after receipt of the notice shall be considered a waiver of the right to a hearing.

(3) The penalty imposed on a person under this subsection:

(i) may not exceed \$1,000 for each violation or \$50,000 total; and

(ii) shall be assessed with consideration given to:

1. the extent to which the existence of the violation was known to but uncorrected by the violator and the extent to which the violator exercised reasonable care;

2. any actual or potential harm to human health or to the environment, including injury to or impairment of the Commission sewage collection and treatment systems or the natural resources of the State;

3. the degree of interference with or injury to the general welfare, health, or property rights of the public;

4. the extent to which the geographic location of the system creates the potential for harm to the environment or to human health or safety;

5. the cost of cleanup and restoration of natural resources;

6. the available technology for controlling, reducing, or eliminating the conditions that caused the violation; and

7. the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(4) Each day a violation continues is a separate violation under this subsection.

(5) A penalty imposed under this subsection is:

(i) payable to the Commission; and

(ii) collectible in any manner provided at law for the collection of debts.

(6) If a person who is liable to pay a penalty imposed under this subsection fails to pay it after demand, the amount, together with interest and any costs that may accrue, shall be:

(i) a lien in favor of the Commission on any property, real or personal, of the person; and

(ii) recorded in the office of the clerk of court for the county in which the property is located.

(j) A person aggrieved by a final decision of the Commission in connection with an order issued under this section may seek judicial review as provided for in the Administrative Procedure Act.

[\[Previous\]](#)[\[Next\]](#)